

**VIA FEDERAL EXPRESS**

May 25, 2007

Mr. Christopher J. Kanakis  
New Jersey Department of Environmental Protection  
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Mr. Frank Faranca  
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Trenton, New Jersey 08625-0028

**Re: Interim Response Action Workplan  
Standard Chlorine Chemical Company Site and  
Former Diamond Site**

Dear Mr. Kanakis and Mr. Faranca:

On behalf of the Peninsula Restoration Group (the Group), please find enclosed the Interim Response Action Workplan (IRAW) for the Standard Chlorine Chemical Company, Inc. Site (SCCC Site) and Former Diamond Site located in Kearny, New Jersey. In accordance with the respective Administrative Consent Orders for the two Sites, four (4) copies of the IRAW are provided to Mr. Kanakis on behalf of Standard Chlorine Chemical Co., Inc. (SCC) and three (3) copies are provided to Mr. Faranca on behalf of Tierra Solutions, Inc. (Tierra). This IRAW is submitted to address the Notice of Deficiency (NOD) received by SCC and Tierra from the New Jersey Department of Environmental Protection (NJDEP) on April 13, 2007 and is provided within the deadline for submission specified in the NOD.

My certification as preparer of the IRAW is included in the front of the document. Also included are certification statements from Margaret W. Kelly, Vice President and General Counsel of SCC and Mr. David Rabbe, President, of Tierra.

The Group believes that this revised IRAW is fully responsive to the NJDEP comments included in the NOD. To facilitate NJDEP's review, attached to this transmittal letter as Table 1 is a cross-reference table that identifies the sections in this revised IRAW where each of the individual NJDEP comments is addressed. Included within the IRAW as Table 1-1 is a similar cross-reference table indicating where the specific requirements for Remedial Action Workplans (N.J.A.C. 7:26E-6.2) are addressed. Attachment A to this

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transmittal letter includes the Group's written response to the NOD received on April 13, 2007.

Modifications to the IRAW made in response to the NJDEP comments include the following:

- The barrier wall system has been extended around the entire perimeter of both Sites and will be keyed into the varved clay in all areas;
- A hydraulic control component (groundwater extraction and treatment) has been incorporated;
- By incorporating groundwater treatment, we eliminated the need for the DNAPL recovery pilot study and have now proposed a full scale DNAPL recovery system and aggressive approach to source removal; and,
- We have greatly reduced the fill requirements by utilizing hydraulic control and maintaining the use of all existing surface cover IRMs.

The Group looks forward to working with the NJDEP to implement the revised IRAW. If you have any questions regarding the IRAW, please feel free to contact Mr. Gerry Coscia of Langan Engineering and Environmental Services, Inc. (SCC's Technical Representative) at (201) 398-4609 or Mr. Enrique Castro of Tierra at (732) 246-5852.

Should you require additional copies of the IRAW in the future, please contact me at (412) 279-3363.

Sincerely,



James S. Zubrow  
Principal Hydrogeologist

cc: R. Webster – Rutgers Environmental Law Clinic  
K. Bell-Hosea – CEA, Inc.  
M. Kelly – SCCC  
E. Castro – Tierra  
M. Brouman – Beazer  
G. Coscia – Langan

**TABLE 1**  
**CROSS REFERENCE SUMMARY**  
**REVISIONS IN RESPONSE TO NJDEP NOTICE OF DEFICIENCY**  
**SCCC AND DIAMOND SITES – KEARNY, NEW, JERSEY**

<b>Comment</b>	<b>Revised Section</b>
Description of Deficiency	See Section 1.0 (Introduction) See Table 1-1 (N.J.A.C. 7:26E Cross Reference Summary)
Description of Deficiency	See Section 1.2 (Interim Response Action Objectives) See Section 1.3 (Interim Response Action Selection)
Description of Deficiency	See Section 1.2 (Interim Response Action Objectives) See Section 1.3 (Interim Response Action Selection)
Comment 1	See Section 1.3 (Interim Response Action Selection) See Figure 1-2 (Material Management Decision Flowchart) See Figure 1-3 (Proposed Areas of Contamination) See Section 4.0 (Design Data Acquisition) See Figure 4-1 (Proposed Test Boring/Sample Location Map)
Comment 2	See Section 2.2 (Area Hydrogeology)
Comment 3	See Section 3.6 (Interim Surface Cover and Storm Water Management System)
Comment 4	See Section 3.1 (Barrier Wall System) See Figure 3-1 (Interim Response Action Plan) See Figure 3-2 (Barrier Wall Details)
Comment 5	See Section 3.1 (Barrier Wall System) See Figure 3-1 (Interim Response Action Plan) See Figure 3-2 (Barrier Wall Details) See Section 3.2 (Hydraulic Control System) See Figure 3-3 (Hydraulic Control Plan) See Figure 3-4 (Process Flow Diagram – Groundwater Treatment)
Comment 6	See Section 1.0 (Introduction) See Table 1-1 (N.J.A.C. 7:26E Cross Reference Summary)
Comment 7	See Section 3.1 (Barrier Wall System) See Figure 3-1 (Interim Response Action Plan) See Figure 3-2 (Barrier Wall Details) See Section 3.2 (Hydraulic Control System) See Figure 3-3 (Hydraulic Control Plan) See Figure 3-4 (Process Flow Diagram – Groundwater Treatment)
Comment 8	See Section 3.4 (Lagoon Dewatering and Backfilling) See Figure 3-6 (Lagoon Backfilling Details) See Section 3.6 (Interim Surface Cover and Storm Water Management System) See Figure 3-7 (Interim Surface Cover and Storm Sewer Plan) See Figure 3-8 (Interim Surface Cover and Storm Sewer Details)

Comment 9	See Section 3.4 (Lagoon Dewatering and Backfilling) See Figure 3-6 (Lagoon Backfilling Details) See Section 3.6 (Interim Surface Cover and Storm Water Management System) See Figure 3-7 (Interim Surface Cover and Storm Sewer Plan) See Figure 3-8 (Interim Surface Cover and Storm Sewer Details) See Section 3.7 (Site Preparation Activities)
Comment 10	See Section 3.1 (Barrier Wall System) See Figure 3-1 (Interim Response Action Plan) See Figure 3-2 (Barrier Wall Details) See Section 3.2 (Hydraulic Control System) See Figure 3-3 (Hydraulic Control Plan) See Figure 3-4 (Process Flow Diagram – Groundwater Treatment)
Comment 11	See Section 3.1 (Barrier Wall System) See Figure 3-1 (Interim Response Action Plan) See Figure 3-2 (Barrier Wall Details) See Section 3.2 (Hydraulic Control System) See Figure 3-3 (Hydraulic Control Plan) See Figure 3-4 (Process Flow Diagram – Groundwater Treatment)
Comment 12	See Section 1.3 (Interim Response Action Selection) See Figure 1-2 (Material Management Decision Flowchart) See Figure 1-3 (Proposed Areas of Contamination)
Comment 13	See Section 3.1 (Barrier Wall System) See Figure 3-1 (Interim Response Action Plan) See Figure 3-2 (Barrier Wall Details) See Section 3.2 (Hydraulic Control System) See Figure 3-3 (Hydraulic Control Plan) See Figure 3-4 (Process Flow Diagram – Groundwater Treatment)
Comment 14	See Section 1.3 (Interim Response Action Selection) See Figure 1-2 (Material Management Decision Flowchart) See Section 3.4 (Lagoon Dewatering and Backfilling)
Description of Deficiency	See Section 1.3 (Interim Response Action Selection)
Comment 15	See Section 3.6 (Interim Surface Cover and Storm Water Management System) See Figure 3-7 (Interim Surface Cover and Storm Sewer Plan) See Figure 3-8 (Interim Surface Cover and Storm Sewer Details) See Section 4.6 (Interim Surface Cover and Storm Water Management System Data Acquisition)
Description of Deficiency	See Section 1.3 (Interim Response Action Selection) See Section 1.4 (Scope of the Interim Response Action)
Comment 16	See Section 1.3 (Interim Response Action Selection) See Section 1.4 (Scope of the Interim Response Action)
Description	See Section 1.1 (Status of the SCCC and Diamond Sites)

of Deficiency	See Section 2.6 (Baseline Ecological Evaluations)
Comment 17	See Section 1.1 (Status of the SCCC and Diamond Sites) See Section 2.6 (Baseline Ecological Evaluations)
Comment 18	See Section 1.1 (Status of the SCCC and Diamond Sites) See Section 2.6 (Baseline Ecological Evaluations)
Description of Deficiency	See Section 1.1 (Scope of the Interim Response Action) See Section 3.2 (Hydraulic Control System) See Figure 3-3 (Hydraulic Control Plan) See Figure 3-4 (Process Flow Diagram – Groundwater Treatment) See Section 4.2 (Hydraulic Control System Data Acquisition)
Comment 19	See Section 1.1 (Scope of the Interim Response Action) See Section 3.2 (Hydraulic Control System) See Figure 3-3 (Hydraulic Control Plan) See Figure 3-4 (Process Flow Diagram – Groundwater Treatment) See Section 4.2 (Hydraulic Control System Data Acquisition)
Comment 20	See Section 1.1 (Scope of the Interim Response Action) See Section 3.2 (Hydraulic Control System) See Figure 3-3 (Hydraulic Control Plan) See Figure 3-4 (Process Flow Diagram – Groundwater Treatment) See Section 3.6 (Interim Surface Cover and Storm Water Management System) See Figure 3-7 (Interim Surface Cover and Storm Sewer Plan) See Figure 3-8 (Interim Surface Cover and Storm Sewer Details) See Section 4.2 (Hydraulic Control System Data Acquisition) See Section 4.6 (Interim Surface Cover and Storm Water Management System Data Acquisition) See Appendix B – Groundwater Modeling Results
Comment 21	See Section 1.1 (Scope of the Interim Response Action) See Section 3.2 (Hydraulic Control System) See Section 3.6 (Interim Surface Cover and Storm Water Management System) See Figure 3-7 (Interim Surface Cover and Storm Sewer Plan) See Figure 3-8 (Interim Surface Cover and Storm Sewer Details) See Section 4.2 (Hydraulic Control System Data Acquisition) See Section 4.6 (Interim Surface Cover and Storm Water Management System Data Acquisition) See Appendix B – Groundwater Modeling Results
Comment 22	See Section 1.1 (Scope of the Interim Response Action) See Section 3.2 (Hydraulic Control System) See Section 3.6 (Interim Surface Cover and Storm Water Management System) See Figure 3-7 (Interim Surface Cover and Storm Sewer Plan) See Figure 3-8 (Interim Surface Cover and Storm Sewer Details) See Section 4.2 (Hydraulic Control System Data Acquisition) See Section 4.6 (Interim Surface Cover and Storm Water Management

	System Data Acquisition) See Appendix B – Groundwater Modeling Results
Description of Deficiency	See Figure 3-1 (Interim Response Action Plan)
Description of Deficiency	See Appendix E (Quality Assurance Project Plan)
Comment 23	See Section 4.0 (Design Data Acquisition) See Appendix E (Quality Assurance Project Plan)
Description of Deficiency	See Section 5.0 (Permits)
Comment 24	See Section 3.6 (Hydraulic Control System) See Figure 3-4 (Process Flow Diagram – Groundwater Treatment)
Description of Deficiency	See Section 3.1 (Barrier Wall System) See Figure 3-1 (Interim Response Action Plan) See Figure 3-2 (Barrier Wall Details)
Comment 25	See Section 3.1 (Barrier Wall System) See Figure 3-1 (Interim Response Action Plan) See Figure 3-2 (Barrier Wall Details)
Description of Deficiency	See Table 1-1 (N.J.A.C. 7:26E Cross Reference Summary) See Section 1.4 (Scope of the Interim Response Acton) See Figures 7-1 and 7-2 (Interim Response Action Design and Permitting Schedule and Interim Response Action Construction Schedule)
Comment 26	See Table 1-1 (N.J.A.C. 7:26E Cross Reference Summary) See Section 1.4 (Scope of the Interim Response Acton)



**Attachment A**  
**Response to April 11, 2007 Notice of Deficiency**

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**RE: Interim Response Action Workplan  
Standard Chlorine Chemical Company Site and  
Former Diamond Site**

Dear Mr. Kanakis and Mr. Faranca:

This letter is written on behalf of Standard Chlorine Chemical Co, Inc. and Tierra Solutions Inc. in reply to the Notice of Deficiency letter issued to those companies on April 11, 2007 by the New Jersey Department of Environmental Protection ("NJDEP" or the "Department") in response to the June 23, 2006 revised Interim Response Action Workplan for the Standard Chlorine Chemical Company Site and the Diamond Site ("IRAW"). Simply put, the Department makes a fundamental mistake in the implementation of its own rules. The Department's NOD letter incorrectly attempts to apply the provisions of the Grace Period Rule program to the IRAW as well as to the two separate Administrative Consent Orders ("ACOs") deemed to constitute the relevant oversight documents governing the work. As is discussed more fully below, the nature and timing of the IRAW submittal as well as the ACOs preclude application of the Grace Period Rule program. While this point is in some measure irrelevant given that the revisions to the IRAW being submitted simultaneously with this letter are responsive to the technical components of NJDEP's comments, our legal position on this point ought to be clear.

To provide context for that legal position, some factual background is in order. The IRAW was prepared on behalf of the Peninsula Restoration Group ("Group") and was presented as an integrated work plan to address conditions at the Standard Chlorine Chemical Company (SCCC) Site and the adjoining former Diamond Shamrock (Diamond) Site located in Kearny, New Jersey. These sites, together with a third site known as the Koppers Seaboard (Seaboard) Site collectively comprise one of the larger areas of contiguous land available for commercial and/or industrial redevelopment in



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northern New Jersey. As to the SCCC Site, the IRAW identified and addressed conditions that are the subject two separate oversight documents – an ACO between the Department and Standard Chlorine Chemical Company dated October 20, 1989 (“SCCC ACO”) and an ACO dated April 17, 1990 by and among the Department, Occidental Chemical Corporation and Tierra Solutions, Inc. (“OCC/Tierra ACO”), but the latter only to the extent intended to address chromium and its compounds associated with chromite ore processing residue (COPR). For the Diamond Site (aka Site 113), the operative oversight document is the OCC/Tierra ACO.

The IRAW was first submitted to the Department on March 30, 2004. The Group received no comments to the IRAW, however, until more than two years later in April 2006. Other documents further supporting components of the IRAW, including a Pre-Design Investigation Workplan and a Solidification Treatability Study Workplan were submitted in October 2004. Comments from the Department on these other documents were delayed by a year and a half, until May of 2006. Based on meetings held with the Department following receipt of comments, revisions to all of the documents, including the IRAW, were submitted in June 2006 and were made consistent with the meeting discussions between the Group and NJDEP. At about the same time (July 3, 2006), and in response to NJDEP demands, the Group submitted a written request to use the Area of Contamination (“AOC”) policy authorized by the United States Environmental Protection Agency (“USEPA”) pursuant to the Resource Conservation and Recovery Act (“RCRA”) to the extent components of the IRAW might depend on applicability of that policy. NJDEP forwarded the Group’s request to USEPA on July 24, 2006. Although USEPA responded to the Group’s request in January 2007, NJDEP inexplicably held those comments until April 2007, when a year after the 2006 submission, it issued the NOD.<sup>1</sup>

The timing and sequence of events noted above is critical for two reasons. First, comments in the NOD, in part, are critical of the IRAW approach to the extent certain components of the IRAW are keyed to further investigation (See *e.g.* Comment 26). The Department suggests that unacceptable delay would result from such an approach in getting “much needed interim remedial measures in place”. The Group believes that it has satisfied the Department’s concern in this regard with the Revised IRAW that moves

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<sup>1</sup> It also seems incongruous that the Department would issue an NOD letter shortly after informing the Group that it had again requested the Site be listed on the National Priorities List such that the Site would thereafter be subject to requirements under the National Contingency Plan and USEPA guidance and regulations for remediation. After such significant delay in responding to the Group’s submittals, and the request for NPL listing, the issuance of the NOD is hard to comprehend.

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forward with components whose implementation can occur directly following NJDEP approval. That said, given the history of NJDEP delay in reviewing and commenting on the IRAW, NJDEP criticism of the Group's original more holistic approach to site conditions based on stated need for immediate action is, at best, disingenuous. The second, and more important reason that the timing of the IRAW-related submittals is important is because the submittals pre-date the Grace Period Rule adoption on September 18, 2006 (and indeed, the initial submittal even pre-dates the August 15, 2005 proposal of the rule). Only the Department's delay in reviewing the original March 2004 and revised June 2006 IRAW submittals even brings the Grace Period Rule potentially into play. As discussed below, however, the Grace Period Rule program does not apply to any work completed pursuant to the OCC/Tierra ACO or the SCCC ACO nor to the IRAW referred to above.

**The Grace Period Rule Program Does Not Apply to OCC/Tierra's ACO Or The SCCC ACO**

**A. The IRAW Was Submitted Voluntarily Under the ACOs**

To the extent the NOD letter directs itself to activities under the OCC/Tierra ACO, the Department asserts that the IRAW was submitted by Tierra pursuant to Paragraphs 26, 27 and 44 of the OCC/Tierra ACO. As noted above, the Peninsula Group submitted the IRAW consistent with the existing oversight documents applicable to the two Sites. It should be stressed, however, that submission of the IRAW in the first instance was completely voluntary. In fact, the NJDEP previously approved certain interim remedial measures ("IRMs") submitted pursuant to Paragraphs 26 and 27 of the OCC/Tierra ACO that are currently in place at Site 113. This As-Built for Site 113 Interim Remedial Measures approved by NJDEP was submitted on December 6, 1991. A separate IRM to address COPR at the SCCC Site was completed and approved with As-Built submitted February 7, 1992.<sup>2</sup> Similarly, with respect to the SCCC Site, the work plan for the IRMs required pursuant to paragraphs 30 and 31 of the SCCC ACO, was approved by the NJDEP in June of 1990 and these approved IRMs (as subsequently modified with NJDEP approval) were fully implemented prior to the end of 1990.

Paragraph 44 of the OCC/Tierra ACO and Paragraph 48 of the SCCC ACO, both titled "Additional Remedial Investigation and Remedial Action," is also invoked by the

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<sup>2</sup> It should be noted that, as to the Standard Chlorine Chemical Company Site, the ACO only obligates Occidental/Tierra to address chromium contamination.

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Department in support of the NOD requirements for Tierra. However, with respect to the OCC/Tierra AC, subsequent to implementation of the IRMs referenced above no request for additional remediation, interim or otherwise, was made by the Department to Tierra; and with respect to the SCCC ACO, certain additional IRMs and other actions were in fact implemented by SCCC with NJDEP approval (*e.g.*, closure of an old production well, recharacterization of containerized materials, *etc.*). Additionally, with respect to the SCCC Site, components of the current IRAW had been proposed for implementation as part of both the 1990 Remedial Action Workplan and the 1991 Remedial Action Workplan submitted on SCC's behalf. The NJDEP never reviewed these submissions. Further, with respect to IRMs, no request for additional work was made by NJDEP prior to the time the Group voluntarily submitted the IRAW. In fact, the closest NJDEP came to suggesting further IRM work came in December 2005 when NJDEP provided long-awaited comments to the Diamond Site RI Report and there suggested that additional IRMs "be considered". Of course at that point, the IRAW was already awaiting NJDEP review. Moreover, while the referenced paragraphs of the ACOs do provide authority for requesting additional Remedial Investigation or additional Remedial Action, Paragraph they do not provide NJDEP with any authority to contravene the agreements as memorialized in the ACOs. Even if NJDEP requests "additional remedial investigation and/or remedial action" (note that "interim" remedial measures are never mentioned), Paragraph 44 of the OCC/Tierra ACO and Paragraph 48 of the SCCC ACO are clear that any such additional work "shall be conducted in accordance with this Administrative Consent Order." As noted in the discussion that follows, this provision requires that the ACOs themselves (more specifically, Appendix A to each) and not the provisions of the Technical Requirements for Site Remediation ("Tech Regs") should govern the acceptability of any interim remedial measures proposed by Tierra or SCCC or required by NJDEP pursuant to the ACOs.

**B. The Grace Period Rule Does Not Alter The OCC/Tierra ACO Or The SCCC ACO**

Pursuant to N.J.A.C. 7:26C-10.1(a)2, the Department has the authority to apply the provisions of the Grace Period Rule Program for a person's failure to remediate a discharge as required by one of the seven categories of NJDEP enforcement authority listed below:

1. Administrative orders issued pursuant to any of the Department's statutory authorities;
2. Administrative consent orders issued pursuant to N.J.A.C. 7:26C-5.;

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3. The Industrial Site Recovery Act Rules, N.J.A.C. 7:26B;
4. Industrial Site Recovery Act remediation agreements issued pursuant to the Industrial Site Recovery Act Rules, N.J.A.C. 7:26B;
5. The Underground Storage Tanks rules, specifically N.J.A.C. 7:14B-1, 3 and 7 through 14;
6. The Discharges of Petroleum and Other Hazardous Substances rules, specifically N.J.A.C. 7:1E-5; and
7. The Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

Simply put, the OCC/Tierra ACO and the SCCC ACO do not qualify as predicate enforcement vehicles for which a violation subjects a person to the Grace Period Rules. Moreover, as the IRAW was prepared, in part, pursuant to these ACOs and is not expressly governed by any of the regulatory schemes listed above, the IRAW is likewise not subject to the Grace Period Rule program.

Of the seven regulatory categories listed above, only two are potentially applicable to Tierra and SCCC, the second – Administrative Consent Orders issued pursuant to N.J.A.C. 7:26C-5, and the seventh – the Technical Requirements for Site Remediation (“Tech Regs”). Closer evaluation, however, discloses that neither of these categories is applicable to Tierra or SCCC in connection with the Interim Response Action that has been proposed collectively for the SCCC and Diamond Sites.

First and foremost, the OCC/Tierra ACO and the SCCC ACO were not issued pursuant to N.J.A.C. 7:26C-5. It could not be, as the rule did not exist at the time that these ACOs were entered. The ACOs instead fall within a special class of agreements that are expressly excluded from Grace Period Rule coverage. Moreover, NJDEP’s Tech Regs do not contain any specific requirements for interim remedial measures as set forth in the IRAW (except for a notification requirement at N.J.A.C. 7:26E-1.4(b)). Given the absence of any substantive “interim” remedial requirements in the Tech Regs that would be legally applicable to the IRAW, Tierra and SCCC could not have “failed to **remediate** a discharge” as required by the Tech Regs. Thus, the Department’s April 11, 2007 NOD letter incorrectly applies the provisions of the Grace Period Rule program to the work proposed.

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The Department's response to comments as part of the promulgation of the Grace Period Rules in the September 18, 2006 New Jersey Register confirms that the Grace Period Rules do not apply to the OCC/Tierra ACO or the SCCC ACO. NJDEP's response to comments finds that the Grace Period Rules were not intended to have a retroactive application to oversight documents in place prior to the September 18, 2006 adoption:

As the commenter notes, oversight documents such as ACOs and RAs are contracts between a party and the Department, which define the terms of an agreement to conduct remediation. The proposed rules and amendments do not make any unilateral changes to the ACO. (See September 18, 2006 New Jersey Register, Response to Comments 197 and 198, 38 N.J.R. 3855).

The response to comments in the Grace Period Rule adoption and N.J.A.C. 7:26C-10.2(d) underscores the fact that the provisions of the Grace Period Rule program do not automatically or retroactively apply to oversight documents, like the OCC/Tierra ACO and the SCCC ACO, executed prior to the September 18, 2006 effective date.

The Department acknowledges the ACO is a contract with NJDEP that cannot be unilaterally revised or modified. Indeed, Paragraph 93 of the OCC/Tierra ACO states that "[n]o modification or waiver of this Administrative Consent Order shall be valid except by written amendment to this Administrative Consent Order duly executed by OCC, CLH [now Tierra] and the Department." Identical language appears in Paragraph 87 of the SCCC ACO. Clearly, no amendment to the ACOs relating to the implementation of the Grace Period Rule program has been executed or even offered by the Department. Until any amendment is offered, negotiated and executed, the terms and conditions of the ACOs set forth the obligations of the parties for the IRAW.

Furthermore, the NJDEP's response to comments confirms that the Department does not intend to implement the provisions of the Grace Period Rule retroactively. In a response to a comment, NJDEP explained its position on retroactivity of the Grace Period Rule as follows:

The Department does not intend to apply the grace period requirements retroactively. It will not look for violations that occurred prior to the adoption of these rules and apply grace period provisions. However, if violations of a document that was in effect prior to the adoption of the grace period provisions occurs after the effective date of these rules, the Department will cite the violation pursuant to the grace period provisions in effect when the violation occurs. (See

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September 18, 2006 New Jersey Register, Response to Comments 207 and 208, 38 N.J.R. 3858).

In this case, the NJDEP's April 11, 2007 NOD letter responds to an IRAW submitted to the Department on June 23, 2006, before the adoption of the Grace Period Rules. As noted in its own regulatory history, the provisions of the Grace Period Rules should not apply to the NJDEP's review of this pre-rule IRAW.

**C. NJDEP Should Not Have Reviewed the IRAW Pursuant to the Tech Regs Standards**

The April 11, 2007 NOD letter cites Tierra and SCCC for eleven deficiencies purportedly based on a review of the IRAW against the requirements of the Tech Regs. However, the alleged violations cited by NJDEP involve provisions of the Tech Regs subchapters for "Remedial Action Selection" and "Remedial Action," N.J.A.C. 7:26E-5 and 6, respectively. The IRAW is not a workplan related to final remedial action as contemplated by N.J.A.C. 7:26E-5 and 6.

The IRAW is an interim work plan designed for interim remedial measures. The NJDEP has inappropriately and incorrectly reviewed the IRAW against Tech Reg standards applicable to "final" remedial action, despite the fact that it is an "interim" remedial action to which those standards do not apply. In fact, the only references in the Tech Regs to an "interim response action" is found in the "Notification" section at N.J.A.C. 7:26E-1.4(b). The Tech Regs do not contain any substantive, specific requirements applicable to conducting interim remedial measures or actions.

The lack of criteria or standards for review of interim remedial measures in the Tech Regs requires the Department to look to the provisions of the OCC/Tierra ACO and the SCCC ACO. Indeed, the ACOs includes express provisions defining standards approved by NJDEP and agreed by the parties to govern the conduct of interim remedial measures.

In particular, Paragraph 26 of the OCC/Tierra ACO requires the submission of an "IRM Work Plan" to be developed "in accordance with the scope of work set forth in Appendix A [to the ACO], for the Diamond Site and the Sites [e.g. the SCCC Site] for which OCC ha[d] not submitted a Directive IRM Work Plan to the Department as of the effective date of this Administrative Consent Order." A copy of Appendix A of the ACO is attached for your convenience. Appendix A provides a broad outline of the requirements of the "IRM Work Plan" or IRAW envisioned and agreed to by all signatories of the ACO, including the Department. Section I of Appendix A describes the

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“Requirements of the Interim Remedial Measures” and Section II details the “Contents of Interim Remedial Measures.”

Similarly, Paragraph 30 of the SCCC ACO requires submission of an IRM Work Plan in accordance with Appendix A thereto. A copy of Appendix A of the SCCC ACO is attached for your convenience. Again, Section I of Appendix A describes the “Requirements of the Interim Remedial Measures” and Section II details the “Contents of Interim Remedial Measures Plan.” As noted above, the specific IRMs referenced in Section I were fully implemented within little more than one year after execution of the SCCC ACO.

A comparison of the IRAW and Appendix A of the two ACOs demonstrates that the IRAW fully complies with Appendix A of the OCC/Tierra ACO and with Section II of the SCCC ACO, (the requirements of Section I having been met previously). Tierra and SCCC, by the preparation and submission of the IRAW, made a submission to NJDEP in accordance with the criteria agreed to by the parties, including the Department, in executing the respective ACOs

To that end, NJDEP’s NOD letter should not threaten Tierra or SCCC with the imposition of any stipulated penalties for alleged violations of the Tech Regs pursuant to Paragraph 65 of their respective ACO. Neither Tierra nor SCCC can be in violation of “interim” remedial requirements if such requirements do not exist in the Tech Regs; nor can an interim action be the subject of penalties applicable only to violations for final remedial actions.

As NJDEP acknowledges, “oversight documents such as ACOs and RAs [Remediation Agreements] are contracts between a party and the Department, which defines the terms of an agreement to conduct remediation.” (See September 8, 2006 New Jersey Register, Response to Comments 197 and 198, 38 N.J.R. 3855). Reviewing the IRAW pursuant to the “final” remedial action requirements of the Tech Regs and not the previously agreed upon provisions of Appendix A to the two ACOs constitutes a breach by the Department of the ACO contract.

## **Conclusion**

For all of these reasons, Tierra and SCCC submit that the April 11, 2007 NOD is beyond the scope of the authority granted to the Department under the Grace Period Rules and



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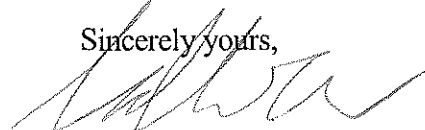
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of no legal force or effect. Nevertheless, in response to the NOD, Tierra and SCCC, along with the other member of the Group, Beazer East, Inc., are submitting a revised IRAW that, we believe, addresses each of the technical issues raised in the NOD.

Sincerely yours,



William L. Warren

np/WLW

cc: Irene Kropp, Assistant Commissioner, NJDEP Site Remediation  
Kenneth Kloo, Administrator, NJDEP, Office of Brownfield Reuse  
Edward Putnam, Assistant Director, NJDEP, Remedial Response Element  
Ronald Corcory, Assistant Director, NJDEP, Oversight Resources Allocation  
Ms. Linda Grayson, NJDEP, Office of Accountability  
Mr. Barry Tornick, USEPA  
Ms. Lisa Rosman, NOAA  
Mr. Timothy Kubiak, USFWS  
Mr. Mitchell Brouman  
William Giarla, Esquire  
Mr. James Zubrow  
Mr. Gerald Coscia  
Mr. Enrique Castro

**APPENDIX A**

**INTERIM REMEDIAL MEASURES**

**SCOPE OF WORK**

## **INTERIM REMEDIAL MEASURES**

### **I. Requirements of Interim Remedial Measures**

- A. Submit to the Department interim remedial work plans (hereinafter "IRM Work Plan") for the conducting of interim measures designed to eliminate existing and potential human exposure to chromite ore processing residue and to chromium and compounds from chromite ore processing residue. The IRM Work Plans for each of the sites shall at a minimum include:
  - 1. Measures for preventing the discharge of chromium and its compounds by way of all routes of potential human exposure, which will to the greatest extent possible, allow present uses of the sites to continue and shall include but not be limited to: fencing, berming, paving, covering, removing and/or otherwise securing all chromium contaminated materials, including that present on the interior and exterior of buildings;
  - 2. Measures to prevent the airborne, erosional or surface water runoff of chromium contamination during the implementation of the interim remedial measures plans;
  - 3. The schedule for implementation of the IRM Work Plans shall reflect the priorities list in Attachment One of the December 2, 1988 Directive;
  - 4. A schedule for periodic monitoring and maintenance of completed Interim Remedial Measures; and
  - 5. A Health and Safety Plan (hereinafter "HASP") conforming to the requirements of 29 CFR 1910.120 for onsite personnel safety to minimize the risk of personal injury, illness and potential environmental impairment associated with the implementation of the IRM Work Plan.

### **II. Contents of Interim Remedial Measures Plan**

- A. Statement of requirements for the interim remedial measures plan pursuant to Section I. above.
- B. A report on activities undertaken pursuant to all Directives and Administrative Orders issued by the Department concerning this Site.
- C. A detailed schedule for interim remedial measures required by this Administrative Consent Order and in this Scope of Work, including:
  - 1. dates for submission of permit applications
  - 2. dates for start and ending of field activities

- D. A detailed engineering design for each interim remedial measure including:
1. a description of appropriate new or additional containment, treatment and/or disposal technologies
  2. a description of special engineering considerations required to upgrade existing facilities
  3. a description of operation, maintenance and monitoring requirements of each interim remedial measures
  4. offsite disposal needs and transportation plans
  5. additional temporary or permanent storage requirements
  6. safety requirements for interim remedial measures
  7. a review of each measure to ensure compliance with applicable statutes and regulations
  8. a list of Federal, State and local permits required for each measure
  9. a discussion of any limits or constraints each measure may place on final remedial alternatives.
- E. Curriculum vitae of key personnel who will participate in the implementation of the approved Interim Remedial Measures Plan.
- F. A detailed performance evaluation program.

APPENDIX A

INTERIM REMEDIAL MEASURES  
SCOPE OF WORK

## INTERIM REMEDIAL MEASURES

### I. Requirements of Interim Remedial Measures

- A. SCCC shall provide, at a minimum, the following Interim Remedial Measures:
  - a. The replacement or addition, as required, of fencing and gates, to prevent access to the contaminated area(s) of the Site (e.g. lagoons);
  - b. The placement of warning signs to be posted at all points of ingress to the above contaminated area as well as at 100 foot (maximum) intervals along the front, rear and sides of the fencing surrounding the area. The signs shall be a minimum of 2 ft. x 2 ft. in size; provide, at a minimum, the warning: "Danger-Hazardous Area - Unauthorized Persons Keep Out" with lettering of a size which shall render the sign readable at a distance of at least 75 ft. to 100 ft.;
  - c. The placement of chain and padlocks on all gates or points of ingress;
  - d. Measures (e.g. diking, grading) to prevent potential stormwater overflow of lagoon contents onto surrounding areas and/or the Hackensack River;
  - e. Securing spilled or damaged tanks/containers that have or threaten to discharge hazardous substances.

### II. Contents of Interim Remedial Measures Plan

- A. A statement of requirements for the interim remedial measures plan pursuant to Section I. above
- B. A report on all activities undertaken pursuant to all Directives and Administrative Orders issued by the Department concerning this site.
- C. A detailed schedule for all interim remedial measures required by this Administrative Consent Order and in this Scope of Work, including:
  - 1. dates for submission of all permit applications
  - 2. dates for start and ending of all field activities
- D. A detailed engineering design for each interim remedial measure including:
  - 1. a description of appropriate new or additional containment, treatment and/or disposal technologies
  - 2. a description of special engineering considerations required to upgrade existing facilities

3. a description of operation, maintenance and monitoring requirements of each interim remedial measures
  4. offsite disposal needs and transportation plans
  5. additional temporary or permanent storage requirements
  6. safety requirements for interim remedial measures
  7. a description of ability of each measure to be phased into individual operable units
  8. a review of each measure to ensure compliance with applicable statutes and regulations
  9. a list of all Federal, State and local permits required for each measure
  10. a discussion of any limits or constraints each measure may place on final remedial alternatives
- E. Curriculum vitae of all key personnel who will participate in the implimentation of the approved Interim Remedial Measures Plan.
- F. A detailed performance evaluation program
- G. In accordance with N.J.S.A. 45:8-45, all plans or specifications involving professional engineering, submitted pursuant to this Administrative Consent Order, shall be submitted affixed with the seal of a professional engineer and any plan involving land surveying submitted pursuant to this Administrative Consent Order shall be submitted affixed with the seal of a land surveyor licensed pursuant to the provisions of N.J.S.A. 45:8-1 et seq.



APPENDIX B

REMEDIAL INVESTIGATION  
SCOPE OF WORK

## REMEDIAL INVESTIGATION SCOPE OF WORK

### I. Requirements of Remedial Investigation

- A. Fully characterize all waste and other materials which are, or may be the **source(s)** of air, soil, surface water and ground water pollution at the site
- B. Fully determine the nature, type and physical states of air, soil, surface water and ground-water pollution at the site, emanating from the site or which has emanated from the site
- C. Fully determine the horizontal and vertical extent of pollution at the site, emanating from the site or which has emanated from the site
- D. Fully determine migration paths of pollutants through air, soil, ground water, surface water and sediment
- E. Fully determine impact of the air, soil, surface water and ground water pollution on human health and the environment
- F. Collect, present and discuss all data necessary to adequately support the development of a feasibility study and the selection of a remedial action alternative that will remedy the adverse impacts of the pollution on human health and the environment
- G. Fully analyze present production methodologies for manufacturing, waste generation and environmental control at the site in order to ascertain if any change to such methodologies will decrease the threat to health or environment posed by operations at the site.
- H. In accordance with N.J.S.A. 45:8-45, all plans or specifications involving professional engineering, submitted pursuant to this Administrative Consent Order, shall be submitted affixed with the seal of a professional engineer and any plan involving land surveying submitted pursuant to this Administrative Consent Order shall be submitted affixed with the seal of a land surveyor licensed pursuant to the provisions of N.J.S.A. 45:8-1 et seq.

### II. Contents of Remedial Investigation Work Plan

#### IMPORTANT NOTE:

All of the following items shall be included in the RI Work Plan. If any of the items have previously been submitted or completed, it shall be so stated in the RI Work Plan. For these items, the following shall be included in the RI Work Plan:

- description of items submitted and/or summary of investigation completed
- **date(s)** of submission or completion